

**TESTIMONY OF DAN ASHE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE,  
DEPARTMENT OF THE INTERIOR, BEFORE THE U.S. HOUSE OF  
REPRESENTATIVES, COMMITTEE ON OVERSIGHT AND GOVERNMENT  
REFORM, SUBCOMMITTEE ON INTERIOR, REGARDING BARRIERS TO  
RECOVERY AND DELISTING OF LISTED SPECIES UNDER THE  
ENDANGERED SPECIES ACT OF 1973**

**April 21, 2016**

**Introduction**

Good morning Chairwoman Lummis, Ranking Member Lawrence, and Members of the Subcommittee. I appreciate the opportunity to testify before you today on the Endangered Species Act of 1973 (ESA). At the Committee's request, my testimony will focus on the U.S. Fish and Wildlife Service's (Service) work to recover and delist species protected under the ESA and challenges related to that process.

The ESA is one of the nation's most important conservation laws. It is implemented jointly by the Service and the National Marine Fisheries Service (NMFS). The law's stated purpose is to provide a program and means for the conservation of threatened and endangered species and the ecosystems upon which they depend. The ESA provides a safety net for species that are at risk of going extinct. When a species is designated as threatened or endangered – or "listed" under the ESA – it is in dire need of help. The Service uses the best available scientific and commercial information to determine whether species need to be listed, to identify and address the threats to the species, and to facilitate the recovery of the species.

**Success of the ESA**

In 1988, Congressman John Dingell, a sponsor of the original ESA, wrote the following about the passage of the law in 1973. "The goal Congress set then was unparalleled in all of history. Our country resolved to put an end to the decades – indeed, centuries – of neglect that had resulted in the extinction of the passenger pigeon and the Carolina parakeet, and the near extinction of the bison and many other species with which we share this great land. If it were possible to avoid causing the extinction of another species, we resolved to do exactly that... When Congress passed the Endangered Species Act, it set a clear public policy that we would not be indifferent to the destruction of nature's bounty."

The ESA has been successful in its essential goal to conserve listed species, which effectively protects the nation's biological diversity heritage for the benefit of future generations of Americans. Since it was enacted by Congress in 1973, the ESA has successfully prevented the extinction of more than 99 percent of the over 1,500 species it protects.

The continued success of the ESA is predicated upon the Service's partnerships with states, other Federal agencies and private landowners, as demonstrated by several conservation achievements that recently culminated in "delisting" several recovered species. Partnerships developed and maintained by the Service have sustained years of recovery efforts for a myriad of species. As a

result, during the Obama Administration, the Service has delisted more species due to recovery than during any prior administration and we are on track to delist more than all previous administrations combined. Recently delisted species include the Louisiana black bear, Oregon chub, Delmarva fox squirrel, Virginia northern flying squirrel, Modoc sucker, island night lizard, and brown pelican.

The ESA has also advanced the recovery of many other listed species. And though still endangered, many other species – among them the California condor, black-footed ferret, whooping crane, and Kirtland’s warbler – have had their populations increase to or near their highest levels in decades. Additionally, under the ESA the Service has “downlisted” a number of species from endangered to threatened due to successful recovery efforts. Recently, the Service downlisted the Santa Cruz cypress, wood stork, and two populations of green sea turtles, and has proposed to downlist the West Indian manatee.

There have also been more than two dozen imperiled species that were candidates for listing under the Act that have been conserved through proactive efforts and no longer require consideration for listing during this Administration alone. Partnerships have been essential to this type of proactive work to conserve species that are candidates for listing to the point where they don’t need the protection of the ESA. Recent examples include the Sonoran desert tortoise in Arizona, the New England cottontail in six northeastern states, and the greater sage grouse in eleven western states. Ensuring the conservation of these species and the ecosystems upon which they depend is good for a myriad of other wildlife species and for humans who use the same ecosystems for hunting, fishing, outdoor recreation, and other services like clean air and water. These conservation success stories are also a measure of the success and importance of the ESA.

## **The Recovery Process**

Recovering species to the point where they are ready for delisting and no longer need the protections of the ESA often requires focused conservation efforts over many years, often decades, to implement recovery actions that include, for example, habitat restoration, best management practices for various human activities, and consistent monitoring. The status of the population and the severity and scope of threats the species faces are important factors in the length of time it takes to achieve full recovery.

The recovery and delisting of the bald eagle was the culmination of a 40-year conservation effort. The Aleutian Canada goose recovery took 34 years. Efforts to recover the whooping crane have been underway since the 1940s when fewer than 20 cranes remained. Those efforts have been dramatically successful, with a wild population today of more than 250 birds. Likewise, the California condor and black-footed ferret, both of which were so perilously close to extinction that no individuals of either species remained in the wild, have made extraordinary progress. Today condors and ferrets have been successfully bred in captivity and reintroduced to the wild, where they have successfully produced wild-born offspring.

Despite the dramatic progress toward recovery that each of these species has made, the whooping crane, California condor and black-footed ferret are still endangered species and will likely remain so for many more years. That outcome – a long and seemingly slow recovery

period – is the virtually inevitable consequence of waiting until a species has been greatly depleted before beginning efforts to recover it. It is often the case that the longer that conservation actions for a species are postponed, the more time that a species remains on the endangered list. By beginning conservation efforts early, it may be possible to shorten the time that a species spends on the endangered species list, or even to avoid the need to place it on that list at all.

## **Gray Wolf**

The gray wolf is an iconic example of the ESA's success in preventing extinction and promoting recovery. Wolves were extirpated from most of the Lower 48 states by the middle of the 20th century, with the exception of northern Minnesota and Isle Royale in Michigan. The gray wolf first gained federal protections when it was added to the U.S. List of Endangered Native Fish and Wildlife in 1967, with the listing of the Timber Wolf in the Great Lakes region. By 1978, wolves were listed as an endangered species throughout the contiguous United States and Mexico, except for those wolves in Minnesota classified as threatened. With the protections afforded by the ESA, wolves were able to repopulate the Western Great Lakes (WGL) and Northern Rocky Mountain (NRM) regions, both through natural dispersal and the reintroduction of wolves into Yellowstone National Park and central Idaho in 1995 and 1996.

Since the species was first listed, the gray wolf has rebounded from the brink of extinction to exceed population targets set for the WGL and NRM and continuing to expand their range into Washington and Oregon. In 2011, the Service determined that gray wolves were successfully recovered in the WGL and NRM states of Montana, Idaho, eastern Washington, eastern Oregon, and north central Utah and delisted those distinct population segments. In 2012, the Service delisted gray wolves in the state of Wyoming. In 2014, the final rules delisting gray wolves in Wyoming and in the WGL were vacated by district courts, and ESA protections were reinstated for these populations. The wolves maintain federal protections while those decisions are on appeal.

The Service continues to manage gray wolves under the ESA, with the exception of wolves in Idaho and Montana. The Service works in close partnership with state agencies throughout the wolf's range, and this cooperative effort is largely to thank for the rebound in wolf populations since the species was first listed. Wolf restoration has been an amazing success due to both the resiliency of wolves and the cooperative efforts of Federal, State, and Tribal agencies, conservation groups, and private citizens, including ranchers, sportsmen, and outfitters.

## **Litigation**

The ongoing litigation regarding the status of wolves in Wyoming and the WGL is a high profile example of a species' delisting being challenged legally. However, the Service has delisted 28 domestic species due to recovery and has received challenges for only four of those species: the gray wolf, Northern Virginia flying squirrel, bald eagle, and the Greater Yellowstone Ecosystem (GYE) population of the grizzly bear. Despite legal challenges, the Service has continued to pursue and successfully finalize delisting rules using the tools available through the ESA. We successfully defended the Northern Virginia flying squirrel and bald eagle delistings and both

species have been removed from the Federal List of Endangered and Threatened Wildlife. The Service recently issued a new proposed rule to delist the GYE population of the grizzly bear, and, as mentioned above, the Service is appealing the D.C. District Court decisions on our gray wolf delisting.

During 2009 and 2010, the Service faced more than 20 lawsuits in numerous district courts challenging missed deadlines for more than 100 species. The Department of Justice asked the Judicial Panel on Multidistrict Litigation to transfer 20 petition deadline cases from seven district courts and assign them to the U.S. District Court for the District of Columbia. After the Panel agreed to do so, the District Court consolidated all of the cases, and referred the consolidated case to the court's mediation process, and that mediation ultimately led to the 2011 Multidistrict Litigation (MDL) settlement agreements.

The MDL provided predictability for stakeholders and local communities. The settlements have allowed the Service to establish and make available to the public a multi-year schedule for listing determinations on our candidate species. Stakeholders knew in advance, in some cases years in advance, when we would be reviewing these candidates to determine whether a listing proposal was still warranted.

Since the MDL agreements were approved and the Service made its work plan public, we have seen an almost 96 percent reduction in species subject to lawsuits filed for missed deadlines on petition findings. The MDL settlements have made our listing activities more certain and predictable, and have allowed the Service to focus more of our limited resources on actions that provide the most conservation benefit to the species that are most in need of help.

When the Service settles a deadline case, we agree to a schedule for taking an action that is already required by the ESA. We do not agree to an outcome, rather we agree to a date certain to complete our work. We do not give away our discretion to decide the substantive outcome of our work, for example whether a species should be listed under the ESA or should not be listed. The notice and comment and other public participation provisions of the ESA and the Administrative Procedure Act still apply to the process for making those decisions.

### **Emerging Threats and Recovery**

Listing under the ESA becomes necessary when a species declines, or threats to it increase, to the point where it is in danger of extinction throughout all or a significant portion of its range (an "endangered species") or it is likely to become an endangered species in the foreseeable future (a "threatened species"). Recovery of species is not a static examination of these threats and efforts to address them. Recovery is an ongoing, evolving process that must continue to factor in both the conservation actions taken and the emerging new threats to listed species as they develop. Two key evolving threats to species nationwide are expansion of the human population and the effects of a rapidly changing climate.

Our growth into a nation of more than 300 million people creates more potential for threats to the health and well-being of the fish, wildlife, and plant resources that sustain us economically, aesthetically, and recreationally. Ensuring that America's threatened and endangered species

continue to be protected and recovered requires a renewed commitment by all of us to maintain a strong, effective ESA, one that is responsive to both the needs of our imperiled resources and the concerns of our citizens.

The Earth's climate is changing rapidly. The effects of this change have been documented across the planet. A growing body of evidence has linked this accelerating climate change and related impacts with observed changes in fish and wildlife, their populations, and their habitats in the United States. For example, many species of threatened and endangered songbirds in Hawaii are now at greatly increased risk due to disease vectors that are spreading as a result of climate change. Higher water temperatures resulting from climate change have a negative impact on many native trout and other cold- and cool-water fish populations across the country. Salmon populations in the northwest face increased risk of disease and contaminant impacts exacerbated by climate change. Across the continental United States, climate change affects the migration cycles and body condition of migratory songbirds. Shifts in the range of species have been documented, causing birds to have to adapt quickly to different conditions which in turn, can impact their ability to find the food they need for successful reproduction. Rising sea levels combined with storm surges affect fish and wildlife habitats, particularly along the Atlantic and Gulf Coasts and in the Pacific Islands, including habitats on our coastal National Wildlife Refuges used by many birds for nesting or during migration. Polar bear population declines have already been observed in Canada, and extirpations of Bay checkerspot butterfly populations in the San Francisco Bay area are also documented. Ongoing and projected climate change impacts were part of the basis for the recent decision to list the rufa red knot as a threatened species.

New challenges lie ahead in the conservation of threatened and endangered species as a result of the effects of climate change. Many imperiled species are already existing and surviving at the limits of their ecological tolerance due to known threats, such as habitat conversion and fragmentation, limited water supplies, environmental contaminants and invasive species. The additional stress of the effects of a rapidly changing climate creates the potential for more listings and adds to the urgency of recovery actions.

Although the effects of climate change are considered and assessed in our implementation of the ESA, we recognize that climate change effects vary by species and location, and can interact with other conditions such as habitat fragmentation or invasive species. The effects of climate change may be negative for some species but positive or neutral for others. Also, even when such effects are negative, that does not automatically mean that a species warrants listing under the ESA or that recovery is precluded.

## **Funding**

The conservation needs of listed, proposed, candidate, and otherwise at-risk species are great, and growing with the increasing threats facing them. At the same time, resources available to address these needs are limited. We continually seek to improve the efficiency and effectiveness of our work, which is why we have aggressively undertaken efforts in recent years to improve implementation of the ESA. These include clarifying rules and policy regarding critical habitat designations and exclusions, the petition process, and cooperation with state agencies. Despite these successful efforts, with over 1,500 listed species and many more at risk, we must regularly

make difficult choices among a great variety of actions, including statutory and discretionary actions and on-the-ground and regulatory efforts. For example, we are faced with decisions between putting resources toward recovery actions to help prevent the extinction of a species or putting those resources toward final actions to move a species to delisting; between implementing on the ground recovery actions for one species and recovery planning for another. Shifting too far in one direction puts the Service's work out of balance and has consequences for our other responsibilities under the ESA.

To that end, the most significant step that Congress can take to improve the effectiveness of the ESA is to provide the resources needed to get the job done in the field. We therefore ask that Congress support the President's budget request for endangered species conservation for Fiscal Year 2017.

## **Conclusion**

The Service continues to make improvements to the implementation of the ESA. However, regardless of what we can do to improve implementation of the ESA, the fact is that recovery is not a simple or fast process. There will always be complicating biological and human factors to contend with. Recovery of listed species is often a lengthy, intricate process, reflective of the long periods of time that the species faced impacts leading to listing. As our world continues to evolve, climate change impacts are felt, and our economy and populations grow, species will face growing threats that will impact the recovery process. With limited resources available, it is important for the Service to balance multiple mandates under the ESA, including preventing species from going extinct and bringing them off the list through recovery efforts.

The ESA was enacted in 1973 to protect plants and animal species threatened with extinction. While the challenges we face now are large and daunting, the Act has been extraordinarily effective in preventing extinctions, moving species towards recovery, and has spurred unprecedented voluntary species conservation efforts across the nation. Our citizens and leaders should be proud of the ESA. It is a reflection of the value we as Americans place on the staggering biological diversity of the planet, and our responsibility to conserve it. This biological diversity is our natural heritage. It inspires awe and is critical to the survival of us all. We should be proud of what we've accomplished, and together, we should embrace and overcome the challenges posed to conserving our wildlife for the benefit of current and future generations of Americans.

Thank you for your interest in endangered species conservation and for the opportunity to testify.